Reversed by Div. Ct.

201

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE, 1981, S.O. 1981, c.53, AS AMENDED

AND IN THE MATTER OF the Complaint made by Mr. Brian B. Hope, of Kingston, Ontario, alleging discrimination in the right to contract by the Royal Insurance Company of Canada, 10 Wellington Street East, Toronto, Ontario.

AND IN THE MATTER OF the Complaint made by Mr. Michael G. Bates, of Islington, Ontario, alleging discrimination in the right to contract and in services, goods and facilities by the Zurich Insurance Company, 188 University Avenue, Toronto, Ontario.

BOARD OF INQUIRY

Professor Frederick H. Zemans

DECISION ON INTERIM APPLICATION OF RESPONDENT ROYAL INSURANCE COMPANY OF CANADA

Appearances:

Ms. Janet Minor,) T.H. Wickett, Esq.)	For the Ontario Human Rights Commission and Brian B. Hope.
W.J. McNaughton, Esq.,) R.E. Hawkins, Esq.,)	For the Respondent, Royal Insurance Company of Canada.
N. Finkelstein, Esq.,	For the Respondent, Zurich Insurance Company.

On January 23, 1984 I was appointed to serve as a Board of Inquiry under the Ontario Human Rights Code, 1981 by the Minister of Labour, the Honourable Russell H. Ramsay, to hear and decide a complaint made by Mr. Brian B. Hope against Royal Insurance Company of Canada, 10 Wellington Street East, Toronto, Ontario. This complaint alleges that the complainant has been denied the right to contract on equal terms without discrimination contrary to s. 3 and s. 8 of the Code.

On February 22, 1984 this hearing was commenced and, upon the application of counsel for the Commission and the complainant, the hearing was adjourned to March 22, 1984.

On March 22, 1984 an informal hearing was convened for the purpose of discussing some preliminary matters in the hope of promoting the expeditious disposition of this complaint. At this time, counsel for the Commission informed me of the possibility of hearing the Hope complaint together with another, similar complaint, and the hearing was further adjourned to May 22, 1984.

On April 30, 1984 I was appointed to serve as a Board of Inquiry under the Ontario Human Rights Code, 1981 by the Minister of Labour, the Honourable Russell H. Ramsay, to hear and decide a complaint made by Mr. Michael G. Bates against Zurich Insurance Company, 188 University Avenue, Toronto, Ontario. This complaint alleges that the complainant has

been denied the right to contract on equal terms without discrimination contrary to s. 3 and s. 8 of the Code. It is also alleged that the complainant's right to equal treatment in services, goods and facilities has been infringed contrary to s. 1 and s. 8 of the Code.

In essence, the two complaints concern allegations that young, single, male drivers must pay automobile insurance rates which exceed those of young, single female drivers, and that this discrepancy contravenes the provisions of the Ontario Human Rights Code, 1981.

A single hearing into both these complaints was commenced on May 22, 1984 with counsel for both respondents present. At the outset of this hearing, Mr. McNaughton, counsel for the respondent Royal Insurance Company of Canada, sought to have the complaint against Royal Insurance dismissed on two grounds. This application to dismiss is the subject of this interim decision.

Application by respondent Royal Insurance Company of Canada

Mr. McNaughton first submitted that this Board was without jurisdiction to determine the complaint against Royal Insurance since the effective date of the insurance contract at issue (April 19, 1982) predated the proclamation of the Human Rights Code, 1981 (June 15, 1982). In Mr. McNaughton's view, s. 3 of the Code is designed "to protect the right to enter into a contract and not to provide a vehicle for a review of the contents of any given contract." (Transcript of Proceedings, p. 20)

Secondly, Mr. McNaughton challenged the status of the complainant, Mr. Brian B. Hope, to pursue this complaint. Mr. McNaughton based this second challenge on the following propositions:

1) Section 3 of the Code is designed to protect the right of the complainant to contract on equal terms with parents in the same position. Since there is no allegation that any other father of a 16 year old applying for the same insurance coverage from the same company would be met with any different rate, there is no discrimination alleged which falls under the protection of s. 3.

2) The complainant lacks standing to pursue this complaint because it is his son's age, sex and marital status which are the relevant considerations, and s. 31 of the Code requires that complaints be personal to the complainant (with the one exception that the Commission may initiate a complaint as provided by s. 31 (2)).

These preliminary issues will be considered in the order in which they were argued.

Issue #1: Applicability of the Human Rights Code, 1981

The complaint against the Royal Insurance Company of Canada was initiated by Mr. Brian B. Hope on August 11, 1982. Mr. Hope's complaint to Ontario Human Rights Commission, which has not been made an exhibit in these proceedings, alleges that, effective June 25, 1982, Mr. Hope had his son added as an occasional driver to his automobile insurance. Mr. Hope further states that the cost of this added insurance was $86.00 and that it is his understanding that this sum was based on the fact that his child was a single, sixteen year-old male. Mr. Hope's

complaint concludes:

> I am a father of a sixteen year old single son and I have reason to believe that I have been denied the right to contract on equal terms without discrimination because of the sex and marital status of my son and because of our family status in contravention of Section 3 and Section 8 of the Human Rights Code, 1981, Statutes of Ontario, 1981, Chapter 53.

In his submission that the Board is precluded from considering a contract that was entered into prior to the proclamation of the Code, Mr. McNaughton intimated that such consideration would breach the presumption against the retrospective operation of legislation. Both counsel are agreed that the effective date of the contract of insurance between Brian Hope and the Royal Insurance Company of Canada was April 19, 1982, a date which does preceed the Code's proclamation date of June 15, 1982. It was admitted by Ms. Minor that the June 25 date appears in the complaint because that was the date on which Mr. Hope received his bill from the insurance company for the premium. (Transcript of Proceedings, p. 33) As such, the following questions must be addressed:

1) Would the application of the Code to this contract of insurance be a retrospective application?

2) If the answer to question 1 is in the affirmative, is the presumption against retrospectivity rebutted in this case?

The retroactivity and retrospectivity of statutes has been a source of concern for courts and academics alike.

E.A. Driedger has discussed many of the difficulties of the application of statutes to prior existing circumstances in a series of publications on the topic ("The Retrospective Operation of Statutes" (Legal essays in Honour of Arthur Moxon. Edited by J.A. Corry, 1953); The Construction of Statutes (Toronto: Butterworths, 1974); "Statutes: Retroactive Retrospective Reflections." (1978), 56 Can Bar Rev. 268). Driedger distinguishes retroactivity from retrospectivity as follows:

> A retroactive statute is one that operates as of a time prior to its enactment. A retrospective statute is one that operates for the future only. It is prospective, but it imposes new results in respect of a past event. A retroactive statute operates backwards. A retrospective statute operates forwards, but it looks backwards in that it attaches new consequences for the future to an event that took place before the statute was enacted. A retroactive statute changes the law from what it was; a retrospective statute changes the law from what it otherwise would be with respect to a prior event. ("Reflections," supra, at 268-9)

In the present case there is no suggestion that the Human Rights Code, 1981 is retroactive in effect. The Code does not say that it is to come into force on a day prior to its enactment, or that it effects past actions. Hence, I am only required to focus on whether the principle of retrospectivity is applicable.

The classic statement of the presumption against retrospective operation of statutes was made by Willis J. in Phillips v. Eyre (1870), L.R. 6 Q.B. and was quoted with approval by Duff J. of the Supreme Court of Canada in Upper Canada College v. Smith (1920), 61 S.C.R. 413 at 416 as follows:

> Retrospective laws are, no doubt, prima facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law... Accordingly, the court will not ascribe retrospective force to new laws affecting rights, unless by express words or necessary implication it appears that such was the intention of the legislature.

With the use of British precedent, Duff J. further reasoned:

> the rule that statutory enactments generally are to be regarded as intended only to regulate the future conduct of persons is...'deeply founded in good sense and strict justice' because speaking generally it would not only be widely inconvenient but 'a flagrant violation of natural justice' to deprive people of rights acquired by transactions perfectly valid and regular according to the law of the time. (417)

It is apparent that narrowing the focus to the concept of retrospectivity does little to alleviate confusion. In Bank of Nova Scotia v. Desjarlais, [1983] 2 W.W.R. 645 at 650, Matas J.A., speaking for the Manitoba Court of Appeal, said simply:

> Whether legislation is retroactive or retrospective is not an easy question to answer... Review of the case law indicates that a fine line may have to be drawn to determine the particular issue before a court.

In Re Sanderson and Russell, (1980) 24 O.R. (2d) 429 at 433, Morden J.A., speaking for the Ontario Court of Appeal, found:

> a uniform and simple formula has not emerged to govern all future cases. Varying definitions of "retrospectivity" have been given and it has been said that it is a "somewhat ambiguous" term...Further, it has been noted that "there may be some inconsistency in judicial views concerning the nature of the presumption [against retrospective operations]"...These difficulties indicate that the issues presented can be approached in more than one way.

Driedger suggests the following test for identifying and analyzing retrospective statutes:

> For retrospectivity the question is: Is there anything in the statute to indicate that the consequences of a prior event are changed, not for time before its enactment, but henceforth from the time of enactment, or from the time of its commencement if that should be later. ("Reflections," supra, at 269.)

Driedger further suggests that retrospectivity can be identified as follows:

> a statute cannot be said to be retrospective if it is brought into operation by a characteristic or status that arose before it was enacted; but... it is retrospective if it is brought into operation by a prior event described in the statute. ("Reflections," supra, at 267.)

As the discussion below indicates, courts have had a difficult time applying any test in a way that clarifies the confusion surrounding the concept of retrospectivity.

In The Queen v. The Inhabitants of St. Mary, Whitechapel, (1848), 116 E.R. 811, a woman became a widow before the enactment of a statute which declared:

> no woman residing in any parish with her husband at the time of his death shall be removed, nor shall any warrant be granted for her removal, from such parish, for twelve calendar months next after his death, if she so long continue a widow. (812)

It was held that the operation of the statute was not confined to persons who had become widows after the Act passed. Rather, it was found that the statute operated prospectively, relating to future removal only, and that it was not properly called a retrospective statute merely because part of the requisites for its action was drawn from time antecedent to its passing. In the words of Lord Denman C.J.:

> The clause is general, to prevent all removals of the widows described therein after the passing of the Act; the description of the widow does not at all refer to the time when she became widow... (812)

In West v. Gwynne [1911] 2 Ch. 1, a statute was similarly held to apply to leases entered into before the statute was enacted. In rejecting the use of the word "retrospective," Buckley L.J. reasoned:

> The question here is whether a certain provision as to the contents of leases is addressed to the case of all leases or only of some, namely, leases executed after the passing of the Act. The question is as to the ambit and scope of the Act, and not as to the date as from which the new law, as enacted by the Act, is to be taken to have been the law. (12)

West v. Gwynne was followed by the Manitoba Court of Appeal

in R. v. Levine (1926), 46 C.C.C. 342, in which an amendment to an Act was applied in order to convict a person who was acting legally under the pre-amendment state of the law. Like Whitechapel and Gwynne, it was found that the effect of the amendment was in no way retrospective. Prendergast J.A. found that the offence charged related to a time after the amendment had been made; thus, the charge was not in respect to anything that happened or existed before.

Similarly, in Re Solicitor's Clerk, [1957] 1 W.L.R. 1219, [1957] 3 All E.R. 617, it was held that an amendment to an Act could be applied in the conviction of an individual for an offence that was not an offence before the amendment. For the Court, Goddard C.J. found that no retrospectivity was involved; the Act was prospective, even if the conduct on which it depended had taken place in the past:

> this Act is not in truth retrospective. It enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past is the cause or reason for the making of the order; but the order has no retrospective effect. It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable, or if a penalty were inflicted for having acted in this or any other capacity before the Act came into force or before the order was made. This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past. (1222)

The above passage was quoted with complete approval by the Manitoba Court of Appeal in Ward v. Manitoba Public Insurance Corporation [1975] 2 W.W.R. 53 at 56. In this case it was held

that the Manitoba Public Insurance Corporation was within its rights in collecting an additional premium from the plaintiff for a driver's certificate even though the additional premium was calculated on the basis of the number of demerit points accumulated by the plaintiff prior to the coming into force of the enabling legislation. Guy J.A. concluded:

> On a careful perusal of the Act and Regulations in question, we are satisfied that the intent of the legislators to deal with records implies an intent to deal with antecedent, basic facts and apply them to prospective charges for insurance premiums. (55-56)

The above cases indicate the courts' willingness to apply legislation to ongoing personal and contractual relationships that are entered into prior to the proclamation of legislation. In what may reflect semantic confusion over the "retroactive"/ "retrospective" distinction, the courts have developed a consistent distinction between "prospective" and "retrospective" legislation. The confusion has been compounded by two decisions of the Supreme Court of Canada. In Upper Canada College v. Smith (supra), the Supreme Court held that a statute could not apply to an oral agreement that was made before the statute was enacted. The Court found this offended the presumption against retrospectivity. However, in the later case of Acme Village School District v. Steele-Smith, [1933] S.C.R. 47, the Supreme applied what it found to be a retrospective statute to a contract which was entered into before the statute was enacted.

As Driedger writes:

> ...the application of [an] Act to future actions on past contracts can by its very nature be a prospective operation only.
> (The Construction of Statutes, supra, at 145.)

Yet Driedger has written elsewhere:

> A retrospective statute is one that operates for the future only. It is prospective, but it imposes new results in respect of a past event... A retrospective statute operates forwards, but it looks backwards in that it attaches new consequences for the future to an event that took place before the statute was enacted.
> ("Reflections," supra, at 268-9.)

The difficulty, then, is in labelling the type of legislation at issue in the present case. Is it "prospective" or "retrospective"? In Re Sanderson and Russell, supra, Morden J.A., for the Ontario Court of Appeal, identified the prospective/retrospective dilemma. This case involved the application of The Family Law Reform Act, 1978, S.O. 1978, c. 2, to a claim for support by a person who had acquired the necessary spousal status by a period of cohabitation which had ended before the Act came into force. In finding that the application of the Act to the circumstances of that case would not be a retrospective one, Morden J.A. acknowledged the prospective approach taken in The Queen v. Inhabitants of St. Mary, Whitechapel (supra). To reiterate, it was held to be irrelevant in that case that the woman became a widow before the statute in question became operative. In Re Sanderson and Russell, the Court found that the

same approach was applicable to the consideration of when a person becomes a "spouse", provided that the person is a spouse at the time of the application. In his view:

> These types of situations may be contrasted with cases where the "facts" or "considerations" on which the statute acts are entirely in the past, such as completed transfers of land... (435)

In the circumstances of this case, it is my view that the Code should properly be regarded as prospective in nature. It applies to alleged discriminatory acts that exist from June 15, 1982, forward. As such, any infringement of the right to contract without discrimination which allegedly occurs after that date is properly the subject of a board of inquiry under the present Code. In line with the cases discussed above, and in keeping with the sensible and "fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit" (Interpretation Act, R.S.O. 1980, c. 219, s. 10), the fact that the contract of insurance was entered into at some time prior to the enactment of the Code is of no consequence. It would offend good sense if any discriminatory act which surfaced after the proclamation of the present Code but which was based on a relationship or status that pre-existed the Code, could not be remedied by its application.

The right to contract free of discrimination, like the right to equal treatment with respect to services, goods and facilities (s. 1), the right to equal treatment with respect to the occupancy of accommodation (s. 2), and the right to equal

treatment with respect to employment (s. 4), cannot be truncated. The absurdity of this suggestion has been recognized by Crocket, J. in Acme Village School District v. Steele-Smith (supra, at 59). If the present Code provides no remedy for Mr. Hope, then contracts would be divisible into two classes: those entered into before June 15, 1982, and those entered into afterwards. Such a result must be avoided. Section 3 of the Code protects persons who are in a contractual relationship from June 15, 1982, regardless of when that relationship was created.

Despite my view that the Code is prospective in nature, in light of the confused state of the law, I will proceed to consider this aspect of the respondent's application from the perspective that the application of the Code could be considered to be retrospective. This approach is consistent with that of the Ontario Court of Appeal in Re Sanderson and Russell (supra). In that case, even though the Act in question was found to be retrospective, Morden J.A. was of the view that, since the statutory requirement at issue had been satisfied before the Act came into effect, the problem should also be examined on the assumption that the Act's application would be retrospective. This approach is also supported by the dicta of Le Dain (as he then was) in Latif v. Canadian Human Rights Commission and Fairweather [1980] 1 F.C. 687. In this case, the Federal Court of Appeal distinguished the situation involving discriminatory practices which were

engaged in and completed before the Canadian Human Rights Act, S.C. 1976-77, c. 33, came into force from the situation in which discriminatory practices continue after the effective date of such legislation. Regarding the latter situation, Le Dain J. acknowledged:

> In that limited sense the Act could have a retrospective application -- to discriminatory practices begun before the Act came into force but continuing on or after that date. (705)

Considering the Code as retrospective would potentially advance the respondent's argument, as it requires a determination by me of whether or not the presumption against retrospectivity has been rebutted.

The presumption against retrospectivity can be rebutted by resort to the object of the Code. As Driedger suggests:

> If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply.
> ("Reflections," supra, at 275.)

This view has found support in many courts, including the Supreme Court of Canada (Upper Canada College, supra) and the Ontario Court of Appeal (Re Sanderson and Russell, supra).

In Chapin v. Matthews (1915) 24 D.L.R. 457, the presumption

against retroactive operation was rebutted so that The Farm Machinery Act (Alta.), 1913, c. 15, was applied to agreements that were entered into before the passage of the Act. For the Alberta Supreme Court, Stuart J. held:

> the remedial character of the statute is...a very important consideration. The legislature found that agreements for the sale of farm machinery often had inserted in them most unreasonable conditions, conditions which were plaintly unfair and unjust...When the legislature was confronted with the facts that unreasonable conditions were being continually inserted in such agreements it seems to me quite contrary to reason to suppose that it intended to allow all unreasonable conditions created in the past to continue to operate, as they certainly did, with unfairness and injustice, and to withhold from the Court the new power of disregarding them while not extending the power and jurisdiction only to agreements thereafter intered into...I do not hesitate to hold that the intention of the legislature to cover by the enactment past as well as future agreements is quite clearly indicated. (470)

In Re Sanderson and Russell (supra) the Ontario Court of Appeal said of the Family Law Reform Act, 1978:

> It appears to be social legislation designed to provide a remedy for people who find themselves in the situation of need...The legislation is anything but penal. (438-9)

In the result, the Ontario Court of Appeal concluded:

> the competing interests have been resolved in favour of retrospectivity, if the legislation may be properly characterized as retrospective. (440)

Re Sanderson and Russell was approved by the Supreme Court of British Columbia in Re Skears and Sterling (1982), 143 D.L.R. (3d) 374. In supporting the retrospective operation of the Child Paternity and Support Act, R.S.B.C. 1979, c. 49, as amended, Berger J. found:

> this is social legislation...Counsel conceded that the presumption against retrospective legislation had no application here. In any event, such an argument cannot prevail where it is social legislation that is sought to be enforced (as opposed to penal legislation)... In such cases the presumption against retrospectivity does not apply. (378)

In Bank of Nova Scotia v. Desjarlais [1983] 2 W.W.R. 645, the Manitoba Court of Appeal applied the Manitoba Consumer Protection Act, C.C.S.M. c. C200, as amended, to a contract that pre-existed the amendment. Matas J.A. adopted the approach of Lord Hatherly, L.C. in Pardo v. Bingham (1869), 4 Ch. App. 735:

> We must look to the general scope and purview of the statute, and the remedy sought to be applied, and consider what was the former state of the law, and what it was that the Legislature contemplated. (649-50)

The Court also adopted Duff J's analysis from Upper Canada College (supra, at 419) in which he described the various ways in which legislative intent may be expressed:

> that intention may be manifested by express language or may be ascertained from the necessary implications of the provisions of

> the statute, or the subject matter of the legislation or the circumstances in which it was passed may be of such a character as in themselves to rebut the presumption that it is intended only to be prospective in its operation.

In the end, the Manitoba Court of Appeal found that the statute under consideration was intended to provide protection to consumers, and that an elaborate procedure had been established for this purpose. As such, the Court found that the amendment governed the agreement, notwithstanding that the agreement was made before the amendment.

Finally, in Canada Mortgage and Housing Corporation v. Hagblom [1983] 6 W.W.R. 413, the Saskatchewan Queen's Bench ruled that an amendment to Saskatchewan's Housing and Special-care Homes Act, R.S.S. 1978, c. H-13, was remedial in nature and was intended to apply to all mortgages, not just mortgages made after the date of the amendment. In considering the amendment, which had the effect of disallowing the charging of certain fees to mortgagors, Batten C.J.Q.B. concluded:

> the amendment in this case is remedial in nature as part of the protection of debtors' legislation in Saskatchewan. The obvious and reasonable construction is that the amendment is intended to apply to all actions taken after its enactment... It would be nonsensical to suggest that the intent of the legislation is such that leave would only be required in the case of mortgages entered into after the amendment. (421)

Following the above-mentioned approach of looking to the general scope and purview of legislation, it is beyond doubt that the Human Rights Code, 1981, is both protective of the public

(rather than strictly punitive) and remedial in nature. The provision of equal rights and opportunities and the "creation of a climate of understanding and mutual respect" are the predominant goals of the Code as expressed in its preamble. Retribution is conspicuously absent from this delineation of goals, and a reading of the functions of the Commission (as enumerated in s. 28) impresses the reader with the conciliatory, proactive nature of this legislation. Furthermore, the flexible powers of boards of inquiry to make a variety of orders aimed at restitution and future compliance with the Code (s. 40) -- in furtherance of the goal to create "a climate of understanding and mutual respect" -- overshadows the brief mention of liability to a "fine" for contravention of the Code in s. 43(1).

That the Code is intended to be remedial is apparent from the following clause of its preamble:

> And Whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario...Her Majesty...enacts as follows... (emphasis added)

To summarize the conclusion to Issue #1, the Human Rights Code, 1981 is applicable to the facts of this case. This Board has jurisdiction to determine this complaint. Given the equivocal language of the Code with respect to retrospective operation, and assuming that an application of the Code to the facts of this case would be retrospective, the presumption against such a retrospective application is rebutted by the

protective and remedial nature of the Code.

Issue #2: Status of Mr. Brian Hope to Pursue this Complaint

Mr. McNaughton first argued that this complaint should be dismissed because the complainant is not alleging that any other father in the same position would be charged any different insurance rate. Leaving aside the question of whether group discrimination is possible under the Code (i.e. the suggestion that there is no discrimination as long as all persons in an identifiable group -- in this case, fathers of males -- are treated equally), I disagree with Mr. McNaughton's analysis of this complaint. The complaint alleges an infringement of Mr. Brian Hope's right to contract on equal terms without discrimination because of, inter alia, his family status. Section 9(d) of the Code defines "family status" to mean "the status of being in a parent and child relationship." In my opinion, the complainant is alleging that he has had to pay more to insure his child than he would have had to had his child been a female. Although "family status" is new to the Code, it is my opinion that it supports this interpretation. Ms. Minor referred me to the decision of the Board of Adjudication under the Manitoba Human Rights Act, C.C.S.M., c. H175, in Monk v. C.D.E. Holdings Ltd., Dakota I.G.A. and Dennis Hillman, C.H.R.R. D/1381. That case involved the complaint of a head cashier that she had been discriminated against in respect of her employment because of her family status. The Board found that the complainant had been dismissed from her job because she was the

wife of a man with whom her employer had experienced conflict. In turn, the status of being the wife of the man was held to constitute "family status" considering the somewhat broader definition of that term under the Manitoba legislation. Just as the Manitoba Board found that Mrs. Monk was terminated primarily because she was the wife of her husband, it is possible that Mr. Brian Hope is paying unduly high insurance rates because he is the father of his son.

Mr. McNaughton also challenged the complainant's standing to pursue this complaint because it is his son's age, sex and marital status which are relevant. He referred to s. 31(1) of the Code which reads as follows:

> Where a person believes that a right of his under this Act has been infringed, the person may file with the Commission a complaint... (emphasis added)

With the exception of complaints that are initiated by the Commission pursuant to s. 31(2), it was Mr. McNaughton's position that complaints must be personal. Mr. McNaughton supported his position by comparison with s. 15(1) and s. 15(2) of the former Code which read as follows:

> (1) Any person who has reasonable grounds for believing that any person has contravened a provision of this Act may file with the Commission a complaint...
>
> (2) Where a complaint is made by a person other than the person whom it is alleged was dealt with contrary to the provisions of this Act, the Commission may refuse to file the complaint unless the person alleged to be offended against consents thereto.
> (emphasis added)

Mr. McNaughton's argument is not compelling for two reasons. Firstly, the remedial provisions of the Interpretation Act, R.S.O. 1980, c. 219, s. 10, require this Board to give the Code "such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit." With this in mind, it is my view that the changes from the former to the present Code do not necessarily demand the conclusion that complaints must be purely personal.

Section 8 of the present Code provides:

> No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part

Section 10 prohibits "constructive discrimination" as follows"

> A right of a person under Part I is infringed where a requirement, qualification or consideration is imposed that is not discrimination on a prohibited ground but that would result in the exclusion, qualification or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member...

Finally, s. 11 prohibits discrimination because of association:

> A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination.

Collectively, these sections clearly indicate the Legislature's

intention to target insidious discrimination. The right to contract in the absence of discrimination would be ineffectual if, in the common context of occasional driver contracts of insurance, insured parents could not pursue such complaints because of the abstruse notion -- isolated from a complete reading of the Code -- that the discrimination is personal to their children.

Secondly, even if Mr. McNaughton's view of s. 31(1) is correct, this complaint is personal to the complainant. Mr. Hope is alleging that he is being discriminated against because of his family status. I have already expressed my view that "family status," as "the status of being in a parent and child relationship," is a legitimate basis for a complaint in these circumstances. Mr. McNaughton maintained that the sex and marital status of the complainant's son are the determinative issues. In his view, the complaint is defective because Mr. Hope is not complaining of discrimination because he is simply a parent. Rather, he is complaining that he is the parent of a male child whom he alleges to have been treated with discrimination. In short, Mr. McNaughton submitted that there is no allegation of discrimination on the basis of being in a parent and child relationship; the complaint depends on an allegation of sex and marital status discrimination which is peculiar to his son. In other words, it is my understanding of Mr. McNaughton's position that Mr. Hope is not complaining that he has been discriminated against by being required to pay higher insurance premiums because of his parental status. Rather, it is his submission that Mr. Hope's complaint is that he has to

pay higher premiums than the parent of a female in similar circumstances.

I do not agree that a restricted view of the dynamics of this complaint is warranted. With reference to the Monk case, Ms. Minor quite accurately observed that the suspect characteristics of the "child" are an integral aspect of his father's complaint. Common sense dictates that the consequences of being the parent of a male rather than a female child are properly subsumed in the definition of "family status" as "the status of being in a parent and child relationship." I agree with Ms. Minor that, as a remedial section, section 3 should be interpreted broadly. That section would be hollow indeed if the right to contract on equal terms without discrimination because of family status was interpreted in the narrow manner suggested by Mr. McNaughton.

Therefore, in conclusion with respect to Issue #2, Mr. Hope is a proper complainant within the provisions of the Human Rights Code, 1981.

In the result, the applications herein are dismissed.

DATED AT Toronto this 21st day of June, 1984.

Frederick H. Zemans